

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.16 of 2001

1. Smt. Usha Jaiswal wife of late Gopal Jaiswal.
2. Shri Pranay Kumar Jaiswal son of late Gopal Jaiswal.

Both resident of Jaiswal Kothi Hatma, Kanke road, P.S. Gonda town, District Ranchi. Appellants

Versus

1. The State Bank of India, Upper Bazar, P.S. Kotwali, District Ranchi. Respondent
2. Archana Jaiswal D/o Late Sri Gopalji Jaiswal resident of Jaiswal Kothi, Hatma Kanke Road, P.S. Sukhdeonagar, District- Ranchi
.... Proforma Respondent

For the Appellants : Ms. Srija Choudhary, Advocate
For Respondents : Mr. Rajesh Kumar, Advocate
Mr. Manindra Kr. Sinha, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By Court Heard the parties.

2. The defendants-appellants have preferred this First Appeal being aggrieved by the judgment and decree dated 30.11.2000 passed by the learned Sub Judge IX, Ranchi in Mortgage Title Suit No.84 of 1994 / 22 of 2000 by which the learned court below decreed the suit on contest against all the three defendants with cost and the defendants were directed to pay the decretal amount along with compound interest and costs of the suit within two months from the date of that order failing which the plaintiff bank shall be entitled to the recovery of the said amount from the defendants either jointly or severally in accordance with law by applying for a final decree as per law.

3. The case of the plaintiff in brief is that the deceased borrower namely Gopal Jaiswal applied for a loan from the plaintiff-bank for

purchase of a truck in his name. The plaintiff bank sanctioned a term loan facility for a sum of Rs.2,35,000/- to Gopal Jaiswal and thereafter Gopal Jaiswal executed necessary documents in favour of the plaintiff bank and withdrew the loan amount and purchased a truck. The said truck thus purchased, was registered with the D.T.O., Ranchi bearing registration No. BIN 9972 and there was endorsement that the vehicle was financed by plaintiff-bank. The defendant Nos.1, and 2 stood as guarantors for the said loan and also executed documents in favour of the plaintiff for securing the loan. The original loanee Gopal Jaiswal died on 09.04.1993 and the defendant Nos.1, 2 and 3 being the only survivors of the deceased namely Gopal Jaiswal, inherited all the properties and the estate of Gopal Jaiswal. All the defendants were also in joint possession of the said truck purchased by Gopal Jaiswal. Gopal Jaiswal defaulted in making payment to the bank as promised and after being made repeated requests Gopal Jaiswal made some deposits but did not regularize the account completely but after the death of Gopal Jaiswal no repayment was made in respect of said loan. Gopal Jaiswal also deposited the receipts of collateral security for the loan and also acknowledged the loan. It is also the case of the plaintiff-bank that the truck so purchased by Gopal Jaiswal using the loan amount, had been sent away from Ranchi by defendants for avoiding seizure thereof. Further the case of the plaintiff is that in spite of repeated requests, the defendants did not liquidate the loan and as such the plaintiff called back the amount outstanding and intimated the defendants through its lawyer by sending notice dated 26.11.1993 asking the defendants to pay its entire dues within a month. But even after the notice, the defendants failed to liquidate the loan which necessitated in filing of this suit claiming that the defendants are jointly and severally liable to pay the said dues being the successors in interest of original borrower Gopal Jaiswal as well as defendant Nos.1 and 2 were additionally liable being the guarantors for the loan. The last deposit made by Gopal Jaiswal in the loan account was on 23.03.1993 and the outstanding balance in the loan amount as on 23.05.1994 was Rs.2,58,369.25/-. The suit was initially decreed ex parte on 20.07.1996 but subsequently the ex parte order was set aside on 24.11.1998 and the

defendants filed their written statement.

4. The case of the defendants on the other hand is that the suit is false, frivolous, not maintainable, barred by principles of waiver, estoppel acquiescence and principles of limitation. The defendants also pleaded that the plaintiff has no cause of action for the suit. The defendants further pleaded that late Gopal Jaiswal did not apply for any loan nor he was granted any loan. They denied the execution of loan documents by late Gopal Jaiswal as borrower and by defendant Nos.1 and 2 are guarantors. They also denied that the defendant No.2 mortgaged the land with the plaintiff by depositing title deed as collateral security. The defendants also took the plea that late Gopal Jaiswal did not have any property and the defendants did not inherit any property whatsoever from Gopal Jaiswal, hence, the defendants were not liable for the repayment of loan amount. The defendants also pleaded by contradicting themselves that late Gopal Jaiswal had repaid a sum of Rs.1,03,319/- through pay in slips out of the loan amount and the fixed deposit certificates of Gopal Jaiswal worth Rs.60,520.50/- dated 13.02.1992 and Rs.10,657.50 dated 24.02.1994 were encashed by the bank and credited in the loan account. It is also the case of the defendants that a total sum of Rs.1,74,347/- has been paid in the loan account. It is the further case of the defendant that after the death of Gopal Jaiswal, they approached the plaintiff for allowing them to get their names transferred in the registration certificate so that they could ply the truck and could repay the balance loan amount by the earnings of the truck. But the bank did not take any step.

5. On the basis of the rival pleadings of parties the learned court below framed the following nine issues:-

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got a valid cause of action and right to sue?
- (iii) Is the suit barred by principles of waiver, estoppel and acquiescence?
- (iv) Is the suit barred by law of limitation?
- (v) Whether Late Gopal Jaiswal had taken loan from the plaintiff bank to purchase a truck and whether Gopal Jaiswal had repaid a total sum of Rs.1,74,347/- towards liquidation of loan?

(vi) Is the plaintiff entitled to the reliefs as prayed for?

(vii) Whether the defendants as heirs of loanee Late Gopal Jaiswal are liable to pay back the dues created by Gopal Jaiswal?

(viii) Whether the property as shown in schedule to the plaint was mortgaged by defendant No.2 Pranay Kumar Jaiswal in favour of the plaintiff bank?

(ix) Is the plaintiff entitled to any other relief or reliefs?

6. In support of its case, the plaintiff bank altogether examined five witnesses. Out of the five witnesses, P.W.2- Jagarnath Bhagat, P.W.3- Chintamani Singh and P.W.4- Subodh Thakur are formal witness who have simply proved different documents. Besides the oral evidence, the plaintiff also proved agreement for medium term loan which has been marked as Ext. 1, letter of guarantee executed by defendant Nos.1 and 2 has been marked as Ext. 2, carbon copy of advocate's notice dated 26.11.1993 has been marked as Ext. 3, postal receipts for sending notices to the defendants by registered post have been marked as Ext. 4, 4/a and 4/b, certified copy of the statement of loan account has been marked as Ext. 5, revival letter dated 15.01.1992 signed by Gopal Jaiswal who is the borrower as well as the defendant Nos.1 and 2 has been marked exhibit - 6, the registered sale deed of the property said to have been mortgaged by the defendants has been marked as Ext. 7, plaint of the suit has been marked as Ext. 8, loan sanction letter has been marked as Ext. 9 and letter of confirmation for mortgaging the property has been marked as Ext. 10.

7. On the other hand, from the side of the defence three witnesses have been examined. D.W.1- Ashok Kumar is an advocate's clerk. He has stated that he saw a truck was parked inside the campus and in front of the house of the defendant No.2. D.W.2- Dharendra Kumar Sinha is also an advocate's clerk. He has proved the written statement filed by the defendant No.1 and 2 and the D.W.3- Pranay Kumar Jaiswal is the defendant No.2 himself and corroborated the averments made in the written statement.

8. The learned court below after taking into consideration the evidence both oral and documentary available in the record, decreed the suit preliminarily as already indicated above.

9. Ms. Srija Choudhary, the learned counsel for the appellant submitted that the impugned judgment and decree passed by the learned court below is against the weight of the evidence on record and the learned court below erred by failing to take into consideration that the defendants/appellants approached the plaintiff-bank several times either to allow them to sale the truck but the officers of the plaintiff bank did not co-operate. Hence, because of the non-cooperation of the plaintiff-bank's officers, the hypothecated vehicle could not be sold. Hence, it is submitted that the learned court below ought to have held that the defendants are not liable to pay back the suit amount.

10. Mr. Rajesh Kumar, the learned counsel for the respondent, on the other hand, defended the impugned judgment and decree and submitted that no evidence whatsoever has been put forth by the defence to the effect that they ever approached the plaintiff-bank either in writing or orally on any specific date for selling the hypothecated vehicle. It is further submitted that the defendants failed to produce any evidence whatsoever that they surrendered the hypothecated vehicle to the plaintiff-bank after the death of the original loanee Gopal Jaiswal or before his death and the plaintiff bank by cogent evidence both oral and documentary has proved his case and thus, the court below having rightly decreed the suit preliminarily against the defendants, this appeal being without any merit be dismissed.

11. Having heard learned counsel for the rival parties and perusing the record, I find that the following points emerge for determination in this appeal:-

(a) Whether the defendants are absolved of their liability to pay the loan amount because of the failure of the plaintiff-bank in co-operating with them in transferring the name of the defendants in the registration certificate book of the concerned vehicle?

(b) Whether the learned court below properly appreciated the evidence available in the record?

12. So far as the first point of determination is concerned, it is the contention of the defendants that they approached the plaintiff-bank for change of ownership in the registration certificate book of the vehicle in

question. After carefully going through the evidence put forth by the defence, I find that though D.W.3- Pranay Kumar Jaiswal has stated that they have requested the bank to transfer the ownership of the truck but he could not produce any document whatsoever in support of the contention of the defendants of making any such request to the bank. In his cross-examination he has stated that they have not surrendered the registration certificate book of the said truck to the Registration Department. He does not have any proof to show that the truck has been parked since the time of his father. He does not have any proof to show that the permit of the truck has been surrendered. On the other hand the D.W.3 has categorically admitted that he has not submitted any application in the bank for transferring the ownership of the said truck in their favour. The defendants never intimated the bank that their loan amount be settled by selling the hypothecated vehicle. As it is the case of the defendants that they approached the bank for transferring the ownership of the said vehicle in favour of the defendants. The burden was obviously on them but they failed to produce any document in this regard rather the defendant No.3 in his cross-examination has admitted that they have not intimated the bank about the same. Hence, I do not find any force in this contention of the defendants that they are absolved of the liability of the loan amount because of any misconduct on the part of officers of the plaintiff-bank in not co-operating for transfer of the ownership of the said vehicle to the name of the legal heirs of late Gopal Jaiswal. Hence, this point of determination is answered in negative.

13. So far as the second point for determination is concerned, perusal of the record reveals that the P.W.1 and P.W.5 being the officers of the plaintiff-bank, have proved the case of the plaintiff by oral as well as documentary evidence that the defendants have taken loan and the Ext. 5 is the certified copy of the entry in the banker's book of accounts. So far as the case of the plaintiff that the late Gopal Jaiswal has withdrew the loan amount sanctioned to him and had defaulted in repayment of loan resulting in outstanding amount of Rs.2,58,369.25/- as on date of filing of the suit, in para-14(A) and 14(B) in their written statement, the defendants have admitted that the loan was sanctioned by plaintiff in favour of Gopal

Jaiswal for purchase of truck. D.W.3- Pranay Kumar Jaiswal in para-1 of his examination in chief admitted that his father has taken a loan for purchase of the truck. He has also admitted that the defendants are residing in their ancestral house which indicates that they have inherited the properties of the deceased Gopal Jaiswal.

14. So far as the contention of the defendants regarding repayment of the loan amount is concerned, after going through the documents I find that they have not produced any document in support of their case of repayment of portion of the loan amount withdrawn by Gopal Jaiswal. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State Bank of India vs. Yumnarn Gouramani Singh** reported in **AIR 1994 SC 1644** that If the entries on the books of account produced by bank are corroborated by Branch Manager and other bank officials, it is sufficient proof of loan transaction. So, in this case the Ext. 5 being the entries in the books of account of the plaintiff bank having been corroborated by the bank officials being P.W.1 and P.W.5 the same is a sufficient proof of the loan transaction in the loan account. Further though the defendants in the initial part of their written statement denied the loan but in the later part as well as during evidence admitted the loan. Besides the extract of the books of account the plaintiff-bank has also proved several loan documents executed by the defendants, which remained unchallenged by the defendants. The Ext. 10 which is the letter written by the defendant No.2 acknowledging the equitable mortgage created by him by way of collateral security for the loan amount taken by the loanee Gopal Jaiswal and he also executed the letter of guarantee which has also been proved by the plaintiff-bank. So, keeping in view the aforesaid facts and circumstances of the case, I have no hesitation in holding when the evidence put forth by the plaintiff-bank is sufficient to prove the case of the plaintiff-bank regarding the disbursement of the loan, inheritance of the property of loanee by the defendants besides the defendant No.1 and 2 being guarantors of the said loan amount.

15. Under such circumstances, I am of the opinion that the suit be decreed in favour of the plaintiff and against the defendant making them liable jointly and severally for the suit amount and for passing a

preliminary decree for sale of the mortgaged property. Thus, the impugned judgment and decree passed by the learned court below is confirmed and this appeal being without any merit is dismissed but under the circumstances, without any cost.

16. Let the lower court record be sent back to the court below with a copy of this judgment forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 21st March, 2018
AFR/ Animesh